

JUDGE CROTTY

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09 Civ. 7048

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

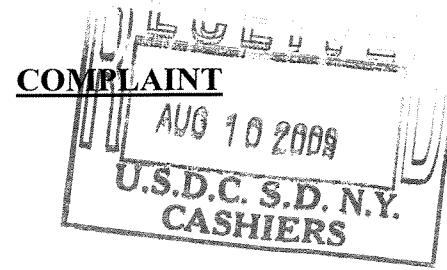
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 ASSICURAZIONI GENERALI S.p.A and FRUTA
 DEL PACIFICO, S.A.,

09 Civ.

Plaintiffs,

- against -

A.P. MOLLER-MAERSK A/S d/b/a MAERSK
 LINE *in personam*; M/V MAERSK VICTORIA
 and M/V NICOLINE MAERSK, their engines,
 boilers, tackle, etc. *in rem*,



Defendants.

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Plaintiff, through its undersigned counsel, alleges as follows for its complaint against
 Defendants:

1. This action involves admiralty and maritime claims within the meaning of Rule 9(h) with respect to the carriage of the subject cargo by sea and falls within the Court's federal question, pendent, ancillary, and supplemental jurisdiction as to the remaining aspects of the claim, including those matters relating to the interstate road or rail carriage of the shipment.

Plaintiff seeks recovery for cargo loss and damage caused by Defendants' breach of contract and torts.

2. Plaintiff ASSICURAZIONI GENERALI S.p.A. is a corporation organized under the laws of a foreign sovereign and sues herein as subrogated insurer of the shipments referred in

this complaint and also sues for and on behalf of the shippers, consignees, and owners of the cargo as their interest may appear.

3. Plaintiff FRUTA DEL PACIFICO, S.A. is a foreign corporation organized under the laws of a foreign sovereign, with an office and principal place of business located at Gran Via Carles III, 158, esc. A, 2º-1º 08034 Barcelona, Spain.

4. Defendants are believed to be corporations organized under the laws of, and with their principal place of business in, certain of the fifty states or foreign sovereigns.

5. This Court has jurisdiction over the *in personam* Defendants, who conduct business in the State of New York as common carriers of cargo for hire and the provisions of services thereto. The bills of lading issued by the Defendants include a Southern District of New York forum selection clause.

6. Upon information and belief the captioned vessels are now, or will be during the pendency of this action, within the admiralty and maritime jurisdiction of this Honorable Court or are otherwise subject to jurisdiction pursuant to Rule 4(k)(2) of the Federal Rules of Civil Procedure.

7. This action involves damages to a shipment of two refer containers (MWSU 904478-0 and MSWU 903401-3), containing 1,920 cartons of bananas, shipped under bills of lading Nos. MAEU800875898 and MAEU800875900 dated on or about May 22, 2008, from Guayaquil, Ecuador to Philadelphia, Pennsylvania.

8. The shipment was received in good condition at the loading port in Guayaquil, Ecuador on or about May 14, 2008 and loaded on board the M/V MAERSK VICTORIA, Voy. 0840, on or about May 20, 2008.

9. The shipment was discharged in Balboa, Panama on or about May 22, 2008 where, on or about May 26, 2008, the shipment was reloaded and shipped on board the M/V NICOLINE MAERSK, Voy. 0810, to the final destination of Philadelphia, Pennsylvania.

10. The aforementioned damage was caused by (a) Defendants' failure to provide the agreed temperature-controlled care for which supplemental fees were paid; (b) the unseaworthiness of the carrying vessels and containers; (c) Defendants' reckless failure to properly load, stow, lash, carry, discharge, deliver, and care for the subject cargo; and (d) Defendants' fundamental breaches of and unreasonable deviations from the terms of the respective contracts of carriage.

11. As a result of the foregoing, Plaintiff and those on whose behalf it sues have sustained damages in the amount of \$19,097.53 for which Defendants are jointly and severally liable as common carriers, bailees, and/or warehousemen for hire.

12. Plaintiff sues on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

WHEREFORE, Plaintiff demands judgment against Defendants jointly and severally in the amount of \$19,097.53 together with interest at a rate of 9% per annum and the costs of this action and prays that this Honorable Court issue its process against the captioned vessels in rem.

Dated: New York, New York
August 10, 2009

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